Filed 2/15/05 Lake Forest Keys v. Brown CA4/3

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

LAKE FOREST KEYS, Plaintiff and Respondent, v. SABINA C. BROWN, Defendant and Appellant.	G033852 (Super. Ct. No. 02CC14314) O P I N I O N

Appeal from an order of the Superior Court of Orange County, David T. McEachen, Judge. Dismissed in part and affirmed in part.

Richard P. Herman for Defendant and Appellant.

Fiore, Racobs & Powers, John R. MacDowell and Michael C. Fettig for Plaintiff and Respondent.

* * *

Defendant Sabina C. Brown filed a notice of appeal from an "[o]rder entering default, and striking defendants answer and cross complaint, of March 9, 2004;

Order denying injunction of March 8, 2004." We dismiss the appeal in part and otherwise affirm.

DISCUSSION

The right to appeal is purely statutory. (*Powers v. City of Richmond* (1995) 10 Cal.4th 85, 106-110.) Under Code of Civil Procedure section 901, "A judgment or order in a civil action or proceeding may be reviewed as prescribed in this title." Section 904.1, in turn, sets forth the list of judgments and orders in unlimited civil cases[1] for which the Legislature has granted the right to appeal. An order entering a default, or striking a pleading is not included in that list. An order denying an injunction *is* included in the list of appealable orders. (Code Civ. Proc., §904.1, subd. (a)(6).)

"It is of course fundamental that an appellate court has no appellate jurisdiction to entertain and pass upon an appeal from a nonappealable order. [Citations.] If it be determined that the appeal is from a nonappealable order and the reviewing court is without appellate jurisdiction, that court has no recourse other than to dismiss the appeal on its own motion." (*Efron v. Kalmanovitz* (1960) 185 Cal.App.2d 149, 152.) We lack jurisdiction to hear the appeal from the order entering Brown's default and striking her pleadings. Accordingly, we must dismiss her appeal from that order.

Were we to treat the appeal from the order entering Brown's default and striking her pleadings as a petition for extraordinary writ, combined with a direct appeal from the purported order denying an injunction, relief would still be denied. Brown has not provided an adequate record for review. She has elected to proceed with an appellant's appendix pursuant to California Rules of Court, rule 5.1, but has flagrantly

---

[1] An "unlimited civil case" is defined as a "civil action or proceeding other than a limited civil case." (Code Civ. Proc., § 88.) Code of Civil Procedure sections 85, 86, & 86.1 list the civil actions or proceedings classified as limited civil cases.

ignored the requirements of that rule.[2] Brown has not even provided us with a copy of the order(s) from which her appeal is taken. Plaintiff Lake Forest Keys (LFK) provided a copy of an order filed March 3, 2004, which reflects rulings made at a hearing on March 2, 2004, including an order entering Brown's default and striking her pleadings. We might presume this is the order Brown describes as entered on "March 9, 2004." But even were we to indulge in that speculation, appellate review of the order would still be doomed. Brown's brief on appeal complains the court issued terminating sanctions. But Brown has not provided the evidence and argument submitted in support of and in opposition to the motion for terminating sanctions. We are told by LFK that the terminating sanction was imposed for discovery abuse and for failure to attend a court ordered mandatory settlement conference. But without an adequate record, indeed *any* meaningful record, we are unable to review the court's order to determine whether there has been an abuse of discretion.

With respect to the purported order of March 8, 2004, denying an injunction, we have no copy of an order to review, and no record of the evidence or argument made in support of or in opposition to an injunction. "It is the appellant's

---

[2] The entirety of Brown's appendix includes: (1) Her "Corrected Third-Amended Cross-Complaint," plainly not relevant to this appeal from an order striking her answer to the complaint, and not relevant to the grounds relied upon by the court in dismissing her cross-complaint; (2) a motion for reconsideration dated August 20, 2004, which does not identify the order Brown asked the court to reconsider, and which may not be considered in any event on her appeal from an order made five and one-half months earlier (*Pulver v. Avco Financial Services* (1986) 182 Cal.App.3d 622, 632 ["documents not before the trial court cannot be included as part of the record on appeal and thus must be disregarded as beyond the scope of appellate review"]); (3) an ex parte motion dated March 26, 2004, which, likewise, could not have been before the court on March 8 or March 9, 2004; (4) an ex parte motion filed April 23, 2004, which also could not have been before the court; and (5) an ex parte motion filed May 5, 2004, which, again, could not have been before the court on March 8 or 9, 2004. The exhibits to the various motions made *after* March 8 and 9, 2004, do not contain any material relevant to the orders striking Brown's pleadings and entering her default, nor to any denial of an injunction.

burden to demonstrate the existence of reversible error." (*Del Real v. City of Riverside* (2002) 95 Cal.App.4th 761, 766.) Brown has failed to demonstrate error.

DISPOSITION

The appeal from the orders directing entry of Brown's default and striking her pleadings is dismissed. The purported order denying an injunction is affirmed. Respondent Lake Forest Keys shall recover its costs on appeal.

IKOLA, J.

WE CONCUR:

SILLS, P.J.

O'LEARY, J.